

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GARY RICHARD LEAF,

Defendant-Appellant.

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UNPUBLISHED

April 18, 2006

No. 259714

Grand Traverse Circuit Court

LC No. 04-009483-FH

Before: Murphy, P.J., and O’Connell and Murray, JJ.

PER CURIAM.

Defendant was convicted by a jury of possession with intent to deliver less than 50 grams of methadone, MCL 333.7401(2)(a)(iv). The trial court sentenced defendant as a third habitual offender, MCL 769.11, to serve 15 months’ to 20 years’ imprisonment. Defendant appeals as of right, challenging both the sufficiency of the evidence and his trial counsel’s effectiveness. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first challenges the sufficiency of the evidence by arguing that the prosecutor failed as a matter of law to prove that defendant knew he was delivering methadone as opposed to legal medicine. “[W]hen determining whether sufficient evidence has been presented to sustain a conviction, a court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt.” *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992). Under this deferential standard of review, “a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict.” *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

The informant who took delivery of the methadone testified that she had known defendant for some time before she chose to cooperate with law enforcement. According to the informant, defendant telephoned, initially asked for her boyfriend, but then offered her ninety methadone pills for \$250. She arranged to meet him, then contacted the police and agreed to meet them before she met defendant. Upon her arrival at the designated drop point, defendant approached, pulled the pills from his pocket, gave them to her, and then took the money from her. A police officer testified that she accompanied the informant to the controlled buy and provided the money for it. The officer confirmed that defendant took a bottle from his pocket and handed it to the informant, that the informant handed defendant what appeared to be the

cash, and that the pills in the bottle contained methadone. These accounts provided a solid basis for the jury's conclusion that defendant knowingly delivered methadone.

Nevertheless, defendant points to other testimony challenging this account. However, resolving credibility contests is the function of the jury, not the appellate court. *People v Lemmon*, 456 Mich 625, 642; 576 NW2d 129 (1998). Where there is evidence to support the jury's verdict, the existence of other evidence supporting a contrary conclusion does not invalidate the verdict. See *People v Vaughn*, 186 Mich App 376, 380; 465 NW2d 365 (1990).

Next, defendant claims ineffective assistance of counsel on the basis of his trial attorney's failure to seek telephone records showing that the informant's boyfriend frequently called defendant from jail. Defendant argues that such evidence would have bolstered his assertion that the boyfriend owed him money, and that the money handed him by the informant was partial payment. "To establish a claim of ineffective assistance of counsel, a defendant must show both that counsel's performance was deficient and that counsel's deficient performance prejudiced the defense." *People v Riley (After Remand)*, 468 Mich 135, 140; 659 NW2d 611 (2003). Because records of the occurrences of telephone calls would not indicate what was discussed, they would not have been relevant to prove anything other than the existence of a relationship between the two men. Therefore, defendant fails to demonstrate any prejudice from counsel's failure to present this evidence.

Defendant also asserts that trial counsel erred by failing to object to the introduction of evidence that defendant had sold methadone to the informant's boyfriend before on several occasions. Although evidence of other acts is not admissible purely to prove that a defendant acted in conformity with his bad character, such evidence is admissible when offered for other reasons, including disproving a theory of mistake. MCR 404(b)(1). Because defendant's theory at trial was that he delivered the methadone to the informant on the mistaken belief that he was in fact handling legitimate medicine, the evidence of his pattern of methadone deals with the informant's boyfriend was properly admitted to rebut his claim of innocent mistake. Because an objection to this evidence would have been futile, defense counsel was not ineffective for failing to raise one. *People v Meadows*, 175 Mich App 355, 362; 437 NW2d 405 (1989).

Affirmed.

/s/ William B. Murphy  
/s/ Peter D. O'Connell  
/s/ Christopher M. Murray